

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

RONALD J. DAVIS, SR.,)
)
 Plaintiff,)
 v.) Case No. 22-2330-HLT-TJJ
)
 CRAIG MALES, et al.,)
)
 Defendants.)

**ORDER GRANTING *IN FORMA PAUPERIS* STATUS
BUT WITHHOLDING SERVICE OF SUMMONS AND COMPLAINT**

Plaintiff Ronald J. Davis, Sr., proceeding *pro se*, has filed a Motion to Proceed Without Prepayment of Fees pursuant to the *in forma pauperis* statute, 28 U.S.C. § 1915(a)(1) (ECF No. 3). The *in forma pauperis* statute provides that the Court may authorize the commencement of a civil action “without the prepayment of fees or security therefor, by a person who submits an affidavit . . . [if] the person is unable to pay such fees or give security therefor.” To succeed on a motion to proceed *in forma pauperis*, the movant must show he or she is financially unable to pay the required filing fee.¹ The decision to grant or deny *in forma pauperis* status under section 1915 lies within the sound discretion of the trial court.²

The Court has reviewed the information provided in Plaintiff’s Affidavit of Financial Status (ECF No. 3-1). Based on the information provided, the Court finds Plaintiff is not

¹ See 28 U.S.C. § 1914(a) (“The clerk of each district court shall require the parties instituting any civil action, suit, or proceeding in such court . . . to pay a filing fee . . .”).

² See *Rowland v. California Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 217–18 (1993) (Section 1915 gives a district court discretion with respect to granting *in forma pauperis* status).

financially able to pay the filing fee to institute a civil action. The Court will therefore grant Plaintiff's request to proceed without prepayment of fees.

Although Plaintiff is granted leave to proceed without prepayment of the filing fee, service of process may be withheld pending review under 28 U.S.C. § 1915(e)(2)(B).³ Where a plaintiff proceeds *in forma pauperis*, the Court must screen the complaint to determine whether the action (1) is frivolous or malicious, (2) fails to state a claim, or (3) seeks monetary relief from an immune defendant.⁴

While such review may occur at any time and the Court is not obligated to conduct the review before service of process,⁵ dismissals “are often made sua sponte prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering.”⁶ In this case, a pre-service review appears appropriate given the Court's dismissal with prejudice of Plaintiff's prior case, *Davis v. Moley*,⁷ on June 22, 2022. Plaintiff's complaint filed in the present case appears to be based upon the same underlying facts and against many of the same defendants as his formerly dismissed case. A separate Order to Show Cause or Report and Recommendation will be entered by the Court after it completes its review of Plaintiff's Complaint.

³ See *Fuller v. Myers*, 123 F. App'x 365, 368 (10th Cir. 2005) (noting that the district courts may dismiss an action without service of process through the screening process of § 1915(e)).

⁴ *Mitchell v. Deseret Health Care Facility*, 2013 WL 5797609, at *1 (D. Kan. 2013); see also 28 U.S.C. § 1915(e)(2)(B).

⁵ See *Buchheit v. Green*, No. 12-4038-CM-KGS, 2012 WL 1673917, at *1 (D. Kan. May 14, 2012).

⁶ *Neitzke v. Williams*, 490 U.S. 319, 324 (1989).


⁷ No. 2:21-CV-02601-HLT-TJJ, (D. Kan. June 22, 2022).

IT IS THEREFORE ORDERED THAT Plaintiff's request to proceed without prepayment of fees (ECF No. 3) is GRANTED, but the U.S. Marshals Service is directed to withhold service of summons and the complaint pending further order of the Court.

IT IS FURTHER ORDERED THAT a copy of this Order shall be mailed to Plaintiff.

IT IS SO ORDERED.

Dated August 24, 2022, at Kansas City, Kansas.

A handwritten signature in cursive script, reading "Teresa J. James", written over a horizontal line.

Teresa J. James
U.S. Magistrate Judge